

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. If and only if House Bill 2526 of the 93rd
5 General Assembly becomes law, the Code of Criminal Procedure
6 of 1963 is amended by changing Section 115-10.2 as follows:

7 (725 ILCS 5/115-10.2)

8 Sec. 115-10.2. Admissibility of prior statements when
9 witness refused to testify despite a court order to testify.

10 (a) A statement not specifically covered by any other
11 hearsay exception but having equivalent circumstantial
12 guarantees of trustworthiness, is not excluded by the hearsay
13 rule if the declarant is unavailable as defined in subsection
14 (c) and if the court determines that:

15 (1) the statement is offered as evidence of a
16 material fact; and

17 (2) the statement is more probative on the point
18 for which it is offered than any other evidence which the
19 proponent can procure through reasonable efforts; and

20 (3) the general purposes of this Section and the
21 interests of justice will best be served by admission of
22 the statement into evidence.

23 (b) A statement may not be admitted under this exception
24 unless the proponent of it makes known to the adverse party
25 sufficiently in advance of the trial or hearing to provide
26 the adverse party with a fair opportunity to prepare to meet
27 it, the proponent's intention to offer the statement, and the
28 particulars of the statement, including the name and address
29 of the declarant.

30 (c) Unavailability as a witness is limited to the
31 situation in which the declarant persists in refusing to

1 testify concerning the subject matter of the declarant's
2 statement despite an order of the court to do so.
3 Unavailability--as--a--witness--includes--circumstances--in--which
4 the-declarant:

5 (1)--is--exempted--by--ruling--of--the--court--on--the
6 ground---of--privilege--from--testifying--concerning--the
7 subject-matter-of-the-declarant's-statement;-or

8 (2)--persists--in--refusing--to--testify--concerning--the
9 subject--matter--of--the-declarant's-statement--despite--an
10 order--of--the-court--to--do--so;-or

11 (3)--testifies--to--a--lack--of--memory--of--the--subject
12 matter--of--the-declarant's-statement;-or

13 (4)--is--unable--to--be--present--or--to--testify--at--the
14 hearing--because--of--health--or--then--existing--physical--or
15 mental--illness--or--infirmity;-or

16 (5)--is--absent--from--the--hearing--and--the--proponent--of
17 the--statement--has--been--unable--to--procure--the--declarant's
18 attendance--by--process--or--other--reasonable--means;-or

19 (6)--is--a--crime--victim--as--defined--in--Section--3--of
20 the--Rights--of--Crime--Victims--and--Witnesses--Act--and--the
21 failure--of--the--declarant--to--testify--is--caused--by--the
22 defendant's--intimidation--of--the--declarant--as--defined--in
23 Section--12-6--of--the--Criminal--Code--of--1961.

24 (d) A declarant is not unavailable as a witness if
25 exemption, refusal, claim or lack of memory, inability or
26 absence is due to the procurement or wrongdoing of the
27 proponent of a statement for purpose of preventing the
28 witness from attending or testifying.

29 (e) Nothing in this Section shall render a prior
30 statement inadmissible for purposes of impeachment because
31 the statement was not recorded or otherwise fails to meet the
32 criteria set forth in this Section.

33 (Source: P.A. 89-689, eff. 12-31-96; 93HB2526enrolled.)

1 Section 10. The Code of Criminal Procedure of 1963 is
2 amended by adding Section 115-10.2a as follows:

3 (725 ILCS 5/115-10.2a new)

4 Sec. 115-10.2a. Admissibility of prior statements in
5 domestic violence prosecutions when the witness is
6 unavailable to testify.

7 (a) In a domestic violence prosecution, a statement,
8 made by an individual identified in Section 201 of the
9 Illinois Domestic Violence Act of 1986 as a person protected
10 by that Act, that is not specifically covered by any other
11 hearsay exception but having equivalent circumstantial
12 guarantees of trustworthiness, is not excluded by the hearsay
13 rule if the declarant is identified as unavailable as defined
14 in subsection (c) and if the court determines that:

15 (1) the statement is offered as evidence of a
16 material fact; and

17 (2) the statement is more probative on the
18 point for which it is offered than any other evidence
19 which the proponent can procure through reasonable
20 efforts; and

21 (3) the general purposes of this Section and
22 the interests of justice will best be served by admission
23 of the statement into evidence.

24 (b) A statement may not be admitted under this exception
25 unless the proponent of it makes known to the adverse party
26 sufficiently in advance of the trial or hearing to provide
27 the adverse party with a fair opportunity to prepare to meet
28 it, the proponent's intention to offer the statement, and the
29 particulars of the statement, including the name and address
30 of the declarant.

31 (c) Unavailability as a witness includes circumstances
32 in which the declarant:

33 (1) is exempted by ruling of the court on the

1 ground of privilege from testifying concerning the
2 subject matter of the declarant's statement; or

3 (2) persists in refusing to testify concerning the
4 subject matter of the declarant's statement despite an
5 order of the court to do so; or

6 (3) testifies to a lack of memory of the subject
7 matter of the declarant's statement; or

8 (4) is unable to be present or to testify at the
9 hearing because of health or then existing physical or
10 mental illness or infirmity; or

11 (5) is absent from the hearing and the proponent of
12 the statement has been unable to procure the declarant's
13 attendance by process or other reasonable means; or

14 (6) is a crime victim as defined in Section 3 of
15 the Rights of Crime Victims and Witnesses Act and the
16 failure of the declarant to testify is caused by the
17 defendant's intimidation of the declarant as defined in
18 Section 12-6 of the Criminal Code of 1961.

19 (d) A declarant is not unavailable as a witness if
20 exemption, refusal, claim of lack of memory, inability, or
21 absence is due to the procurement or wrongdoing of the
22 proponent of a statement for purpose of preventing the
23 witness from attending or testifying.

24 (e) Nothing in this Section shall render a prior
25 statement inadmissible for purposes of impeachment because
26 the statement was not recorded or otherwise fails to meet the
27 criteria set forth in this Section.

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.